

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAWDAT LAHLOUH, et al.,
Plaintiffs,
v.
DITECH FINANCIAL, LLC,
Defendant.

Case No.18-cv-02881-VKD

**ORDER REASSIGNING CASE;
REPORT AND RECOMMENDATION
RE MOTION TO REMAND**

Re: Dkt. No. 7

Plaintiffs Jawdat and Nisreen Lahlouh sued defendants Ditech Financial, LLC (“Ditech”), Countrywide Home Loans, Inc., Bank of America N.A. (“BANA”), and Does 1-100 for breach of contract and other associated causes of action in California state court. Dkt. No. 3. On May 16, 2018, Ditech removed this action from Santa Clara County Superior Court. The Lahlouhs now seek to remand the case for lack of diversity jurisdiction. Dkt No. 7.

Because federal jurisdiction is lacking, this case should be remanded to state court. However, not all defendants have appeared and consented to magistrate judge jurisdiction, therefore the Court **ORDERS** the Clerk of the Court to reassign this case to a district judge with the recommendation that the case be remanded to Santa Clara County Superior Court.

I. LEGAL STANDARD

Subject matter jurisdiction is fundamental and cannot be waived. *Billingsly v. C.I.R.*, 868 F.2d 1081, 1085 (9th Cir. 1989). Federal courts can adjudicate only those cases which the Constitution and Congress authorize them to adjudicate—those involving diversity of citizenship or a federal question, or those to which the United States is a party. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *see also Chen-Cheng Wang ex rel. United States v.*

FMC Corp., 975 F.2d 1412, 1415 (9th Cir. 1992) (federal courts have no power to consider claims for which they lack subject-matter jurisdiction).

Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” However, the removal statutes are construed restrictively so as to limit removal jurisdiction. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941); *see also Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). The burden of establishing federal jurisdiction for purposes of removal is on the party seeking removal. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004). The district court must remand the case if it appears before final judgment that the court lacks subject matter jurisdiction. 28 U.S.C. § 1447(c); *Albingia Versicherungs A.G. v. Schenker Int’l, Inc.*, 344 F.3d 931, 936 (9th Cir. 2003).

II. DISCUSSION

A. Motion for Remand

Ditech removed this case from California state court on the basis of diversity jurisdiction under 28 U.S.C. § 1332. In its Notice of Removal, Ditech asserted that the Lahlouhs are residents of Santa Clara County, California; Ditech is a Delaware corporation with its principal place of business in Pennsylvania; BANA, as a national banking association with its headquarters in North Carolina, is a resident of North Carolina; and “Countrywide Inc.” is likewise a North Carolina entity after its merger with BANA. Dkt. No. 3 ¶ 4. Based on these facts, Ditech asserted that there was complete diversity of the parties.

The problem is that Countrywide Inc. is not a named defendant in this action. Rather, the complaint names “Countrywide Home Loans, Inc.” as a defendant and states that its principal place of business is California. Dkt. No. 3, Ex. 1 ¶ 2. Because the Lahlouhs also reside in California, the face of the complaint demonstrates that there is no diversity. Subject matter jurisdiction is determined from the face of the complaint, and the Court may not look beyond the complaint to examine the evidence the Lahlouhs submitted with their motion for remand.

1 *Toumajian v. Frailey*, 135 F.3d 648, 653 n.2 (9th Cir. 1998) (“For removal to be appropriate, a
2 federal question must appear on the face of the complaint.”); *see also Caterpillar, Inc. v. Williams*,
3 482 U.S. 386, 392 (1987) (federal question must be presented on face of plaintiff’s properly
4 pleaded complaint); *Fifty Assocs. v. Prudential Ins. Co. of Am.*, 446 F.2d 1187, 1189–90 (9th Cir.
5 1970) (existence of diversity jurisdiction must be sufficient on the face of the complaint). Ditech
6 appears to recognize its error and does not oppose remand, conceding that “Plaintiffs’ claim . . .
7 defeating diversity appears to have merit.” Dkt. No. 11 at 2, 5.

8 **B. Request for Rule 11 Sanctions**

9 As part of their motion to remand, the Lahlouhs requested “sanctions under Rule 11”
10 against Ditech for failing to perform adequate fact investigation prior to removing the case. Dkt.
11 No. 9 at 2. Ditech correctly points out that such a request is procedurally improper under Fed. R.
12 Civ. P. 11(c)(2). Dkt. No. 11 at 3. The Lahlouhs have since withdrawn their request for sanctions.
13 Dkt. No. 12 at 2. As the request has been withdrawn, the Court does not consider it.


14 **III. CONCLUSION**

15 As jurisdiction is lacking, the Court hereby **RECOMMENDS** that this case be remanded
16 to Santa Clara County Superior Court. Pursuant to Fed. R. Civ. P. 72, any party may serve and
17 file objections to this report and recommendation within 14 days after being served with a copy.
18 The hearing set for June 26, 2018 is hereby **VACATED**, and Ditech’s request to appear
19 telephonically (Dkt. No. 17) is **DENIED AS MOOT**.

20 The Clerk of the Court shall reassign this case to a district court judge.

21 **IT IS SO ORDERED AND RECOMMENDED.**

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23 Dated: June 21, 2018

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25 
26 VIRGINIA K. DEMARCHI
27 United States Magistrate Judge
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